

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
ST. JOSEPH DIVISION

CITIZENS LEGAL ENVIRONMENTAL  
ACTION NETWORK, INC.

Plaintiff,

UNITED STATES OF AMERICA

Plaintiff/Intervenor

v.

PREMIUM STANDARD FARMS, INC.

Defendant.

Case No. 97-6073-CV-SJ-6

**FIRST AMENDED COMPLAINT  
OF THE UNITED STATES OF AMERICA**

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (EPA), files this amended complaint in intervention and alleges as follows:

**I. STATEMENT OF THE CASE**

1. This is a civil action brought in intervention against Premium Standard Farms, Inc. (PSF) for appropriate relief, including a permanent or temporary injunction and civil penalties, for violations of the Clean Water Act (CWA), 33 U.S.C. § 1311 et seq., at PSF's concentrated animal feeding operations (CAFOs) and related facilities in Mercer, Putnam, and Sullivan

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Counties, Missouri, and at PSF's slaughterhouse and meat packing plant in Milan, Missouri.

## **II. JURISDICTION, AUTHORITY, NOTICE AND VENUE**

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345 and 1355 because: (1) the action arises in part under the laws of the United States, (2) the United States is a plaintiff, and (3) the action is brought in part to recover penalties incurred under Acts of Congress.

3. Venue is proper in this judicial district pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b)-(c), 1395, as this is a judicial district in which PSF is doing business and within which the United States' claims arose.

4. The United States has the authority to bring this action on behalf of the Administrator of EPA (Administrator) under Section 506 of the CWA, 33 U.S.C. § 1366, and under 28 U.S.C. §§ 516 & 519. Authority to intervene as a matter of right in this citizen suit brought pursuant to Section 505 of the CWA, 33 U.S.C. § 1365, is vested in the United States pursuant to Section 505(c)(2) of the Clean Water Act, 33 U.S.C. § 1365(c)(2), and permission to intervene was granted by the Court on October 8, 1999.

5. Notice of the commencement of this action and of the filing of the original complaint in intervention, as well as this amended complaint, have been given to the State of Missouri pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

## **III. PARTIES**

6. Plaintiff Citizens Legal Environmental Action Network, Inc. (CLEAN) is a non-profit corporation organized under the laws of the State of Missouri. CLEAN requested the United States to intervene in this action.

7. Defendant Premium Standard Farms, Inc. is a corporation organized under the laws of the state of Delaware with its principal place of business located in Missouri at Highway 65 North, Princeton, Missouri 64673. PSF is engaged in the business of large scale concentrated animal feeding operations in Mercer, Putnam and Sullivan Counties, Missouri.

8. PSF is a "person" as defined at Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

#### **IV. STATUTORY FRAMEWORK : THE CLEAN WATER ACT**

9. The purpose of the CWA is to restore and maintain the chemical, physical, and biological integrity of the waters of the United States. 33 U.S.C. § 1251(a).

10. Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person except as authorized by a National Pollutant Discharge Elimination System (NPDES) permit.

11. "Person" is defined by Section 502(5) to include corporations. 33 U.S.C. § 1362(5).

12. "Discharge of a pollutant" is defined by Section 502(12) of the Clean Water Act. 33 U.S.C. § 1362(12) as "any addition of any pollutant to navigable waters from any point source."

13. "Pollutant" is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), to include "solid waste . . . sewage. . . biological materials . . . and agricultural waste discharged into water."

14. "Navigable waters" are defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7) as "the waters of the United States."

15. "Point source" is defined by Section 502(14) of the CWA, 42 U.S.C. § 1362(14), as "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch,

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channel, conduit . . . container . . . [or] concentrated animal feeding operation . . . from which pollutants are or may be discharged."

16. Pursuant to 40 C.F.R. § 122.23(a), "Concentrated animal feeding operations are point sources subject to the NPDES permit program"

17. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, EPA may issue NPDES permits that authorize the discharge of pollutants into navigable waters of the United States, upon the condition that such discharges will meet all applicable requirements of the CWA.

18. Pursuant to 40 C.F.R. § 122.21(a), "Any person who discharges or proposes to discharge pollutants . . . and who does not have an effective permit . . . shall submit a complete application . . . in accordance with this section . . . ."

19. Pursuant to 40 C.F.R. § 122.21(c), "Any person proposing a new discharge, shall submit an application at least 180 days before the date on which the discharge is to commence . . . ."

20. Pursuant to 40 C.F.R. § 122.21(i)(1), a complete application for a CAFO permit must contain: "(i) The type and number of animals in open confinement and housed under roof. (ii) The number of acres used for confinement feeding. (iii) The design basis for the runoff diversion and control system, if one exists, including the number of acres of contributing drainage, the storage capacity, and the design safety factor."

21. Section 402 of the CWA, 33 U.S.C. § 1342, directs the Administrator of EPA to prescribe conditions for NPDES permits to assure compliance with the requirements of the CWA, including conditions on data and information collection, reporting, and such other requirements as the Administrator deems appropriate.

22. 40 C.F.R. § 122.41(e) provides that "The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit."

23. The violation of a permit condition is a violation of the CWA. See 33 U.S.C. § 1342(h).

24. Effluent limitations are among the conditions and limitations prescribed in NPDES permits issued under Section 402(a) of the CWA, 33 U.S.C. § 1342(a). Effluent limitations are defined in Section 502(11) of the CWA, 33 U.S.C. § 1362(11), as restrictions on the quantity, rate and concentration of chemical, physical, biological and other constituents of wastewater discharges.

25. Section 402(p)(2)(B) of the CWA, 33 U.S.C. § 1342(p)(2)(B), authorizes the Administrator of EPA to require permits for stormwater discharges associated with industrial activity.

26. Under Section 402(b) of the CWA, 33 U.S.C. § 1342(b), EPA may authorize states that meet certain requirements to issue permits and conduct inspections. The State of Missouri is authorized by EPA pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b), to administer the NPDES program for discharges into navigable waters in its jurisdiction.

27. As a supplement to its NPDES program, Missouri allows animal feeding operations under certain conditions voluntarily to obtain Letters of Approval (LOAs). Mo. Code Regs. Ann. tit.10, § 20-6.300(5). However, the LOAs pertain only to Missouri's Clean Water Law, Mo. Rev. Stat. § 644, not to the federal CWA, and they automatically become invalid upon the

issuance of an NPDES permit under the CWA. Mo. Code Regs. Ann. tit.10, § 20-6.300(5)(I).

28. Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), authorizes the Administrator to bring a civil action for injunctive relief and civil penalties pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), for violations of the CWA, including the discharge of any pollutant without, or not in compliance with the terms and conditions of, an NPDES permit and the violation of any condition or limitation of an NPDES permit.

29. Pursuant to Pub. L. 104-134 and 61 Fed. Reg. 69,360 (Dec. 31, 1996), the Court may assess civil penalties of up to \$25,000 per day for violations of the CWA occurring prior to January 30, 1997 and civil penalties of up to \$27,500 per day for violations occurring after January 30, 1997.

#### V. FACTS GIVING RISE TO LIABILITY

30. At all times relevant to this complaint, PSF has owned and operated fifteen large scale concentrated animal feeding facilities in Missouri.

31. Those facilities are: Denver Miller, in Mercer County; Green Hills, in Sullivan County; Hedgewood, in Mercer County; Locust Ridge, in Sullivan County; Overlook Ranch, in Sullivan County; Peach/Perkins, in Mercer County; Somerset, in Mercer County; South Meadows, in Sullivan County; Summers Multiplier, in Mercer County; Terre Haute, in Putnam County; Valley View, in Sullivan County; Wade/Webster, in Mercer County; Whitetail, in Putnam County; Wiles, in Mercer County; and Wolf/Badger/Brantley, in Mercer and Putnam Counties.

32. Each of PSF's swine confinement facilities includes between 1 and 19 multi-acre waste storage lagoons; each lagoon is connected to approximately eight confinement barns; and

most barns in turn contains approximately one thousand (1,000) hogs. Each lagoon and its associated barns are referred to in PSF's NPDES permits as a "site," and in this complaint as a "site" or a "barn/lagoon cluster."

33. Altogether, PSF confines an average of more than nine hundred thousand (900,000) hogs at these fifteen facilities. The confined hogs excrete huge quantities of manure and urine, which is flushed from the confinement barns to the lagoons for storage.

34. PSF uses a variety of irrigation equipment, including traveling spray guns, to apply the lagoon waste to fields it owns or leases. The entire hog production operation is designed to store and land apply more than seven hundred and fifty million (750,000,000) gallons of animal waste per year.

35. As alleged further below, there have been multiple spills of hog waste from barns and land application equipment that have reached waters of the United States. In addition, there have been many other spills that did not flow directly to waterways.

36. All of PSF's hog production facilities are concentrated animal feeding operations (CAFOs), as that term is defined in 40 C.F.R. § 122.23 and 10 CSR 20-6.300(1)(B)(8).

37. The animal waste stored and land applied at PSF's CAFO facilities is a pollutant as defined by Section 502(6) of the Clean Water Act, 33 U.S.C. § 1362(6).

38. All of PSF's hog production facilities are subject to the NPDES permitting program as set forth at Section 402 of the Clean Water Act, 33 U.S.C. § 1342.

39. At the time they began operation, PSF's CAFO facilities all lacked NPDES permits; instead, they were operated under LOAs from the Missouri Department of Natural Resources.

40. PSF obtained NPDES permits for its Somerset and Whitetail CAFO facilities in

1995.

41. PSF did not obtain NPDES permits for the rest of its facilities until May and June, 1997 (the 1997 permits).

42. Many of those NPDES permits were revised in 1998 to allow for additional land for land application and to alter some operational requirements (the 1998 permits).

43. All of PSF's NPDES permits in force during the time period relevant to this complaint have prohibited discharges to the waters of the United States except during certain extraordinary storms.

44. The permits have contained numerous operational conditions, including, but not limited to, some or all of the following: requiring containment structures to capture spills from barns and pipes; establishing minimum and maximum levels for liquid waste in the lagoons; restricting the amount of nitrogen that can be applied to fields; requiring that land-applied wastes not leave PSF property; prohibiting PSF from applying waste to fields that are saturated, frozen, or too steep; setting numerous monitoring and reporting requirements; and requiring PSF to comply with narrative water quality standards, such as that waters be free from "putrescent or harmful bottom deposits" and "unsightly color or turbidity [or] offensive odor," and not be toxic to human, animal, or aquatic life.

45. The permits have also incorporated Best Management Practices (BMPs) and Standard Conditions for NPDES Permits (Standard Conditions) documents, which have contained additional prohibitions and requirements. Among other things, they require PSF to maintain minimum separation distances between its land application areas and features such as intermittent streams, water supply reservoirs, and property boundaries; prohibit PSF from



applying process wastes to saturated soils; require PSF to comply with state water quality standards; require PSF to report violations; require PSF to operate and maintain its facilities in accordance with the Missouri Clean Water Law and applicable permit conditions; and require PSF to monitor its land application equipment to prevent over-application of waste.

46. PSF also owns and operates a plant in Milan, Missouri where it slaughters its hogs and packages the meat.

47. The Milan plant is subject to the NPDES permitting requirements.

48. PSF has obtained an NPDES discharge permit, which contains effluent limitations, for its Milan plant.

49. PSF has also obtained a stormwater permit for its Milan plant, which allows discharges of stormwater runoff only from designated stormwater outfalls and only during wet weather.

50. In operating its CAFOs and its Milan plant, PSF has committed numerous violations of the CWA. Those violations are alleged in more detail below.

A. Discharges to Waters of the United States in Violation of the CWA and of NPDES Permits

51. PSF has violated the Clean Water Act by discharging animal waste into waters of the United States from its CAFOs or other point sources it owned and/or operated, before obtaining NPDES permits authorizing discharges into the waters of the United States from the CAFOs in question, on at least five (5) occasions including, but not limited to, the following:

a. On or about September 20, 1995, as much as 48,000 gallons of animal waste was discharged from PSF's South Meadows CAFO into PSF's freshwater lake.

b. On or about March 4, 1996, approximately 30-40 gallons of animal waste was

discharged from PSF's Locust Ridge property into a dry stream bed leading to a freshwater pond.

c. On or about April 14, 1996, an unknown quantity of animal waste was discharged from PSF's Overlook Ranch CAFO into a ditch leading to PSF's freshwater lake.

d. On or about May 16, 1996, an unknown quantity of animal waste was discharged from PSF's Peach-Perkins CAFO into a channel leading to PSF's freshwater lake.

e. On one or more occasions including, but not limited to, Fall 1995 to Spring 1996 at PSF's Wade-Webster CAFO, excess quantities of animal waste were applied to fields owned or leased by PSF, causing waste to be discharged from those fields into waters of the United States, including, but not limited to, one of PSF's freshwater lakes.

52. PSF has violated the provisions of its NPDES permits prohibiting the discharge of animal waste during dry weather conditions and requiring the maintenance of a separation distance of 50 feet between land application areas and intermittent streams, by discharging animal waste into waters of the United States, during dry weather conditions, from a CAFO or other point source owned and/or operated by PSF, after having acquired NPDES permits for the CAFOs in question, on at least three (3) occasions, including, but not limited to, the following:

a. On or about July 10, 1998, approximately 200 gallons of animal waste was discharged, in violation of PSF's NPDES permit, from PSF's Wiles CAFO into the headwaters of Wildcat Creek.

b. On or about July 13, 1998, 2,000-3,000 gallons of animal waste was discharged from a land application area at PSF's Whitetail CAFO, in violation of PSF's NPDES permit, into a ditch leading to Sandy Creek.

c. On or about July 22, 1999, approximately 300 gallons of animal waste was

discharged, in violation of PSF's NPDES permit, at PSF's Terre Haute CAFO into a county road ditch leading to PSF's freshwater lake.

**B. Violations of Operation and Maintenance Requirements in NPDES Permits**

53. PSF has failed to properly operate and maintain its CAFO facilities in a manner consistent with the terms and conditions of the NPDES permits governing them, including, but not limited to, the violations described in paragraphs 54 to 59:

54. PSF has violated the operation and maintenance requirements of its NPDES permits by allowing animal wastes to reach a property line.

a. All of PSF's NPDES permits have required that PSF operate its land application equipment in such a manner that animal wastes do not reach an adjoining property line.

b. In addition, the BMPs have required that PSF maintain a separation distance of 50 feet between land application sites and property boundaries and the Standard Conditions have required that it "operate and maintain facilities to comply with the Missouri Clean Water Law and applicable permit conditions."

c. Despite such requirements, on at least two (2) occasions as more fully specified below, PSF violated its NPDES permits, including the incorporated BMPs and Standard Conditions, by operating its land application equipment in such a way as to allow animal waste to reach adjoining property lines.

d. On or about August 5, 1999, approximately 600 gallons of animal waste was spilled at PSF's Badger/Wolf CAFO during land application when a pipe connection came loose. At least 100 gallons flowed across the boundary of PSF's property, in violation of PSF's NPDES

permit.

e. On or about September 8, 1999, approximately 500 gallons of animal waste was sprayed during land application from PSF's Whitetail CAFO beyond the boundary of PSF's property, in violation of PSF's NPDES permit.

55. PSF has violated the operation and maintenance requirements of its NPDES permits by failing to adequately monitor land application equipment.

a. PSF's permits require that land application equipment for spreading solids or wastewater be monitored such that any malfunctions in the operation of the equipment is detected and corrected before any over application of waste occurs to the spreading site.

b. On multiple occasions, including but not limited to some of the occasions identified above in ¶ 53, PSF failed to detect and correct malfunctions in the operation of its equipment before overapplication of waste occurred.

56. PSF has violated the operation and maintenance requirements of its NPDES permits by failing to maintain proper lagoon levels.

a. PSF's NPDES permits have required that PSF maintain the levels of liquid waste in its lagoons between the minimum and maximum levels listed in the permits.

b. On numerous occasions, the levels of many of PSF's lagoons have fallen outside the permissible range set by the permits.

57. PSF has violated the operation and maintenance requirements of its NPDES permits by exceeding land application limits

a. PSF's NPDES permits have set limits on the amount of animal waste that can be applied to a field within a specified period of time.

b. For lands under the Conservation Reserve Program, these permits limit nitrogen application to 65 pounds per acre per year.

c. For all other fields, these permits limit nitrogen application to the amount that can be removed from the soil by the crop grown.

d. On numerous occasions, PSF has violated its permits by applying to its fields more nitrogen than allowed by its permits.

58. PSF has violated the operation and maintenance requirements of its NPDES permits by failing to install and maintain adequate containment structures.

a. PSF's permits have required that it install and maintain containment around the barn/lagoon clusters to catch spills.

b. PSF has failed to install or maintain some of the required containment structures below its barn/lagoon complexes on time or at all.

c. As a result of this lack of complete containment, on at least one occasion a spill from a barn/lagoon complex has reached waters of the United States.

59. PSF has violated the operation and maintenance requirements of its NPDES permits by exceeding its hog stocking limits.

a. PSF's 1997 permits set separate limits on the "total population equivalent" of hogs at each facility and each barn/lagoon cluster.

b. The "total population equivalent" is based on the combined weight of the hogs.

c. On numerous occasions until the 1997 permits were modified, PSF exceeded the total population equivalent at its facilities and sites.

**C. Violation of Other Conditions in NPDES Permits**

60. PSF has violated its NPDES permits by failing to report noncompliances that may endanger health or the environment.

a. PSF NPDES permits require that PSF report any noncompliance which may endanger health or the environment within 24 hours of becoming aware of the circumstances.

b. On one or more occasions, including but not limited to the discharge of pollutants into a freshwater pond on from PSF's Whitetail facility on 3/22/96, PSF has failed to report noncompliances that may endanger health or the environment.

D. Violation of Permits at the Milan Plant

61. PSF has violated the effluent limits in the NPDES permit for its Milan plant.

a. PSF's NPDES permit for its Milan plant has contained effluent limitations, set on a daily and/or monthly average basis, for a variety of pollutants, including biochemical oxygen demand, total suspended solids, ammonia as nitrogen, and total residual chlorine.

b. PSF has violated these effluent limitations on numerous occasions including, but not limited to, the following dates:

c. PSF violated the monthly average and daily permit limits for total residual chlorine on numerous occasions between March 1998 and February 1999.

d. PSF has violated the monthly average and daily permit limits for biochemical oxygen demand on multiple occasions since 1994.

e. PSF has violated the daily permit limits for total suspended solids and ammonia on multiple occasions since 1994.

62. PSF has violated the stormwater permit for its Milan plant by discharging polluted rinse water from the truck washing operation.

a. PSF's stormwater permit forbids discharges to waters of the United States, other than discharges of stormwater runoff, from designated outfalls.

b. The trucks used to transport PSF's hogs are washed at the Milan plant, sometimes during dry weather.

c. According to the material safety data sheets obtained from PSF, the washing operations use numerous hazardous chemicals, including, but not limited to some or all of the following: Phosphoric Acid, Nonylphenoxy Polyethoxy Ethanol-Iodine Complex, Monammonium Phosphate, Ammonium Sulfate, P-Tert Amylphenol, O-Benzyl P-Chlorophenol, O-Phenyl Phenol, and Isopropyl Alcohol, Sodium Hydroxide, Sodium Metasilicate, Ethoxylated Alcohols, Ethylene Glycol, Monobutyl Ether, Furfuryl Alcohol, Sodium Dodecylbenzene Sulfonate, Sodium Metasilicate, Ammonium Bifluoride, Sulphuric Acid.

d. On one or more occasions, the truck washing operations have resulted in the discharge of rinse water containing pollutants into designated stormwater outfalls.

e. The contaminated rinse water from the outfalls has reached waters of the United States, including, but not limited to an unnamed tributary of the Elmwood Branch.

## **VI. CLAIMS FOR RELIEF**

### **FIRST CLAIM FOR RELIEF: DISCHARGES INTO WATERS OF THE UNITED STATES WITHOUT A PERMIT**

63. Paragraphs 1 through 62 are realleged and incorporated herein by reference.

64. PSF's discharges from facilities that lacked NPDES permits, as described, above constitute "discharges of a pollutant(s)" from a "point source(s)" into "waters of the United States" within the meaning of Section 502 of the CWA, 33 U.S.C. § 1362.

65. Each day that PSF discharged pollutants into waters of the United States without an NPDES permit was a separate violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

66. PSF is subject to a civil penalty of not more than \$25,000 per day of violation of the CWA occurring prior to January 30, 1997 and \$27,500 per day of violation occurring after January 30, 1997. 33 U.S.C. § 1319(d), Pub. L. 104-134 and 61 Fed. Reg. 69,360 (Dec. 31, 1996).

**SECOND CLAIM FOR RELIEF:  
VIOLATIONS OF NPDES PERMITS AT CAFOs**

67. Paragraphs 1 through 62 are realleged and incorporated herein by reference.

68. PSF violated its NPDES no-discharge permits, including the Standard Conditions and Best Management Practices attached thereto, when it discharged animal waste into waters of the United States from facilities that had obtained NPDES permits.

69. In addition to, or in the alternative to, violating the permit provisions prohibiting discharges into waters of the United States, some or all of the discharges violated the water quality standards set forth in the permits, including but not limited to the provisions requiring that discharges not cause waters of the State to have "unsightly color or turbidity [or] offensive odor" or to be toxic to human, animal, or aquatic life.

70. Each time that PSF discharged pollutants into waters of the United States from a facility that had acquired an NPDES permit was a separate violation of the NPDES permit applicable to the facility where the spill occurred.

71. PSF violated its NPDES no-discharge permits, including the Standard Conditions and Best Management Practices attached thereto, when it allowed animal waste to reach, or to



come within 50 feet of, an adjoining property line.

72. Each time that PSF allowed animal waste to reach, or to come within 50 feet of, an adjoining property line was a separate violation of the NPDES permit applicable to the facility where the spill occurred.

73. In addition to, or in the alternative to, the violations already asserted in this Claim for Relief, PSF violated its NPDES permits when it failed to detect and correct malfunctions in the operation of its equipment before overapplication of waste occurred.

74. Each time that PSF failed to detect and correct malfunctions in the operation of its equipment before overapplication of waste occurred was a separate violation of the NPDES permit applicable to the facility where the malfunction occurred.

75. PSF violated its NPDES permits by failing to report noncompliances that could have endangered health or the environment.

76. Each time that PSF violated its NPDES permits by failing to report a noncompliance that could have endangered health or the environment was a separate violation of the NPDES permit applicable to the facility where the discharge occurred.

77. PSF violated its NPDES permits, including the requirement in the Standard Permit Conditions that it operate and maintain its facilities to comply with applicable permit conditions, when it failed to maintain proper lagoon levels.

78. Each day that PSF failed to maintain a proper liquid waste level at a lagoon was a separate violation of the NPDES permit applicable to that lagoon.

79. PSF violated its NPDES permits when it exceeded land application limits.

80. Each year that PSF exceeded the permitted land application limit at a particular field

was a separate violation of the NPDES permit applicable to that field.

81. PSF violated its NPDES permits when it failed to construct or maintain the required containment structures.

82. Each day that PSF failed to construct or maintain the required containment structures at a facility was a separate violation of the NPDES permit applicable to that facility.

83. PSF violated its 1997 NPDES permits when it exceeded the total population equivalent limits at its facilities and barn/lagoon clusters.

84. Each day that PSF exceeded the total population equivalent limits set forth in PSF's 1997 NPDES permits at a facility or barn/lagoon cluster was a separate violation of the NPDES permit applicable to that facility.

85. In addition, or in the alternative to, the claims listed above, PSF has failed to operate and maintain its CAFO facilities in a manner that will achieve compliance with the conditions of its permits.

86. PSF will continue to violate its NPDES permits unless enjoined by this Court from doing so.

87. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), Pub. L. 104-134 and Fed. Reg. 69,360 (Dec. 31, 1996), PSF is liable for a civil penalty of up to \$25,000 per day for each violation of its NPDES permits and the CWA occurring before January 30, 1997, and a civil penalty of up to \$27,500 per day for each violation of its Missouri NPDES permits and the CWA occurring on or after January 30, 1997.

**THIRD CLAIM FOR RELIEF:  
VIOLATION OF NPDES PERMIT AT MILAN PLANT**

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88. Paragraphs 1 through 62 are realleged and incorporated herein by reference.

89. PSF violated the NPDES permit for its Milan plant when it discharged from the plant effluent containing levels of total residual chlorine, total suspended solids, ammonia, and biochemical oxygen demand that exceeded the permit limits.

90. Each day that PSF discharged effluent containing levels of these pollutants exceeding the daily permit limits was a separate violation of its NPDES permit.

91. Each month that PSF discharged effluent containing levels of these pollutants exceeding the monthly average permit limits was a separate violation of its NPDES permit.

92. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), Pub. L. 104-134 and Fed. Reg. 69,360 (Dec. 31, 1996), PSF is liable for a civil penalty of up to \$27,500 per day for each violation of its Milan plant NPDES permit occurring on or after January 30, 1997.

**FOURTH CLAIM FOR RELIEF:  
VIOLATION OF STORMWATER PERMIT AT MILAN PLANT**

93. Paragraphs 1 through 62 are realleged and incorporated herein by reference.

94. PSF violated its stormwater permit when it discharged, during dry weather conditions, rinse water containing pollutants from designated outfalls into waters of the United States.

95. PSF will continue to discharge polluted rinse water, in continuing violation of its stormwater permit for its Milan plant, unless enjoined by this Court from doing so.

96. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), Pub. L. 104-134 and Fed. Reg. 69,360 (Dec. 31, 1996), PSF is liable for a civil penalty of up to \$25,000 per day for each violation of its Missouri NPDES permits and the CWA occurring before January 30, 1997,

and a civil penalty of up to \$27,500 per day for each violation of its Missouri NPDES permits and the CWA, occurring on or after January 30, 1997.

## **VII. PRAYER FOR RELIEF**

Wherefore, Plaintiff, the United States of America, requests that the Court enter judgment for the United States and against PSF as follows:

A. Issue a declaratory judgment that PSF illegally operated its CAFO facilities in Mercer, Putnam and Sullivan Counties, Missouri, without NPDES permits, and that it discharged from its CAFO facilities into waters of the United States without NPDES permits; that it has operated and continues to operate its CAFO facilities in violation of the CWA by discharging to waters of the United States in violation of its NPDES permits, and by otherwise violating the conditions and limitations of its NPDES permits; and that it has operated and continues to operate its plant in Milan, Missouri in violation of the terms and conditions of its NPDES and stormwater permits.

B. Order PSF to institute corrective measures and to operate its CAFO facilities in Mercer, Putnam and Sullivan Counties, Missouri, and its Milan, Missouri plant in such a manner as will result in no further violations of its NPDES or stormwater permits and otherwise in accordance with the CWA, and the regulations promulgated thereunder;

C. Order PSF to pay a civil penalty for violations of the CWA, in the amount of up to \$25,000 per day for each violation occurring prior to January 30, 1997 and up to \$27,500 per day for each violation occurring after January 30, 1997, pursuant to Section 309(c) of the CWA, 33,U.S.C. § 1319(c);

D. Award the United States its costs and disbursements for this action; and

E. Grant the United States such further relief as the Court may deem just and proper.

Respectfully submitted,

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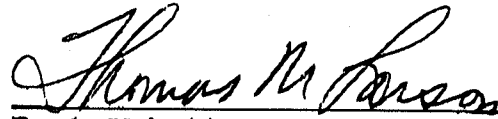
Certificate of Service

I hereby certify that a copy of the foregoing was served this 26<sup>th</sup> day of April, 2000 by depositing the same in the U.S. mail, postage prepaid, and addressed to:

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